IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6722 OF 2004

Sai Construction Pvt.Ltd. & Anr. ...Petitioners

Versus

The Raja Bahadur Motilal Poona

Mills Ltd. & Ors. ...Respondents

.....

Mr.G.S.Godbole for Petitioners.

Mr.Shyam Mehta with Mr.S.G.Karandikar for Respondents.

.....

CORAM: A.M.KHANWILKAR, J.

AUGUST 19, 2004.

P.C.

1. Heard Counsel appearing for the parties.

2. The present Writ Petition takes exception to the order passed by the Trial Court below Exhibit 100 in Special Civil Suit No.683 of 2002 dated August 5, 2004, rejecting the application preferred by the Petitioners, wherein, it was

prayed that the statements enumerated in Para 3 of the Application (Exhibit 100) made out in the affidavit sworn by Shridhar Nandlal Pittie be struck off. The Court below has taken the view that it is not possible to strike off the evidence adduced by the party. The objection for striking off the said portions from the evidence (examination-in-chief) was essentially on the argument that the said portion travels beyond the pleadings in the Plaint. Indeed, that objection can be considered by the Trial Court at the end of the trial and if the Court is satisfied that the evidence travels beyond the pleadings and the issues that would arise for consideration in the Suit, the Trial Court will be well advised to pass appropriate orders in that behalf including of discarding such evidence.

3. To get over this position, Mr.Godbole for Petitioners contends that once the evidence has come on record, the Petitioners will be confronted with the principle enunciated in the case of **Bhagwati Prasad v. Shri Chandramaul reported in AIR 1966 SC 735** as has been noted in the decision

of **Ram Sarup Gupta (dead) L.Rs. vs. Bishun Narain Inter College & Ors. reported in AIR 1987 SC. 1242** (in Paragraph 6 thereof).

4. To my mind, there is no substance in the apprehension entertained by the Petitioners in this behalf, inasmuch as, if the Petitioners raise any objection with regard to particular portion of evidence that is already placed on record, the efficacy of that objection will be considered by the Trial Court at the end of the trial. It is open to the Petitioners to cross-examine the witness even with regard to that portion of the evidence in examination-in-chief without prejudice to the contention already taken in the subject application. The mode that is to be adopted by the Petitioners in that behalf will be entirely the matter which will be considered by the Trial Court at appropriate stage. In case, any prejudice is caused to the Petitioners due to adduction of evidence (examination-in-chief) of the Respondents, even that grievance can be corrected before the Appellate Court in appropriate manner.

5. I see no reason to exercise writ jurisdiction so as to interfere with the discretionary order passed by the Court below, which is a well reasoned and considered decision, at this interlocutory stage.

6. Petition dismissed with the above observations.

A.M.KHANWILKAR, J.